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ABSTRACT

Decisions made by federal and state courts during 1983 concerning school finance are reported in this chapter. Among the decisions discussed are United States Supreme Court findings in cases involving tuition tax credits, reimbursement of misapplied Title I funds by states, and tuition requirements for nonresident students. Cases concerning the constitutionality of state school support programs were litigated in Maryland and Arkansas with opposite results. The legality of fees assessed students was questioned in cases heard in California and New York and other cases touching on similar topics are discussed. Discussed also are: decisions affecting the provision of public funds for services, textbooks, instructional materials, and transportation provided by or for private schools; the provision of funds for special education; the power of school districts to levy taxes; the financial relationship of school districts to other governmental bodies; and the proper allocation of school funds. (PGD)

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FINANCE

Richard A. Rossmiller

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6.0 INTRODUCTION

Cases dealing with issues such as tuition tax credits, reimbursement by states of misapplied Title I funds, and tuition requirements for nonresident students were decided by the United States Supreme Court during the period covered by this yearbook. Cases involving the constitutionality of state school support programs were litigated in Maryland and Arkansas with opposite results. Cases questioning the legality of fees assessed students were decided in California and New Jersey and decisions were handed down in an array of cases involving the legality of various school taxes and expenditures.

6.1 PUBLIC FUNDS FOR PRIVATE SCHOOLS

The United States Supreme Court, in a 5-4 decision, upheld the constitutionality of a Minnesota law that allowed taxpayers, in computing their state income tax,[1] to deduct from their gross income expenses they

1. Mueller v. Allen, 103 S. Ct. 3062 (1983).

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incurred in providing tuition, textbooks, and transportation for their children attending a public or private elementary or secondary school. The statute in question was originally enacted in 1955 with revisions in 1976 and 1978. The deduction was limited to $500 per dependent in grades K-6 and $700 per dependent in grades 7-12. The plaintiffs claimed the statute violated the first amendment's establishment clause by providing financial support to sectarian institutions. The federal district court held the statute did not violate the establishment clause.[2] The United States court of appeals affirmed.[3]

The United States Supreme Court applied the three-part test it had established in *Lemon v. Kurtzman*.[4] With regard to whether or not the statute served a secular purpose, the Court stated, "A state's decision to defray the cost of educational expenses incurred by parents—regardless of the type of schools their children attend—evidences a purpose that is both secular and understandable."[5] The Court then turned to the question of whether the primary effect of the statute either advanced or inhibited religion and found that it did not. The Court noted that the deduction in question was but one of many deductions available to Minnesota taxpayers. The fact that the deduction was available to all parents whether their children attended public or private schools weighed heavily in the Court's decision. The Court commented:

> It is true, of course, that financial assistance provided to parents ultimately has an economic effect comparable to that of aid given directly to the schools attended by their children. It is also true, however, that under Minnesota's arrangement public funds become available only as a result of numerous, private choices of individual parents of school-age children .... Where, as here, aid to parochial schools is available only as a result of decisions of individual parents no "imprimatur of State approval," ... can be deemed to have been conferred on any particular religion, or on religion generally.[6]

The plaintiffs argued that, although the statute appeared neutral on its face, in operation the benefits under the statute accrued primarily to religious institutions. They claimed that 96% of the children in private schools in Minnesota during 1978-79 attended religiously affiliated institutions and, thus, the bulk of deductions taken under the statute would be claimed by parents of children who attend sectarian

2. Mueller v. Allen, 514 F. Supp. 998 (D. Minn. 1981).
3. Mueller v. Allen, 676 F.2d 1195 (8th Cir. 1982).
4. 403 U.S. 602 (1971).
5. Mueller, *supra* note 1, at 3066, 3067.
6. *Id.* at 3069.

schools. The Court, however, gave little consideration to the plantiffs' contentions, stating, "We would be loath to adopt a rule grounding the constitutionality of a facially neutral law on annual reports reciting the extent to which various classes of private citizens claimed benefits under the law."[7]

Turning to the third aspect of the three-prong test, the Court concluded that the statute did not produce an excessive entanglement of the state in religion. The only determination required of state officials was whether specific textbooks served a secular or sectarian purpose and the Court found such decisions not to differ substantially from the types of decisions it had approved in earlier opinions.[8]

In view of the divided decision (5-4), it is worth noting that the minority opinion concluded that any tax benefit that subsidizes tuition payments to sectarian schools is prohibited by the establishment clause of the first amendment. The minority noted, "Because Minnesota, like every other State, is committed to providing free public education, tax assistance for tuition payments inevitably redounds to the benefit of nonpublic, sectarian schools and parents who send their children to those schools."[9]

6.1a Auxiliary Services, Textbooks, and Instructional Materials

The constitutionality of a South Dakota statute providing for the loan of textbooks without charge to students in both public and private schools was contested.[10] It was alleged the statutes in question violated both the establishment clause of the first amendment and the South Dakota Constitution. Plaintiffs claimed the statutes had the primary affect of advancing religion by providing public aid to church-related schools and fostered excessive involvement between the state and the church in religious matters. The federal district court had granted summary judgment to the appellees. The court of appeals found the Supreme Court's decisions in *Meek*[11] and *Allen*[12] to be controlling and found that, as written, the statutes did not violate the establishment clause.

Plaintiffs also claimed that the way in which school districts administered the statutes violated the establishment clause. The court found the record in the case insufficient to determine whether or not the practices followed by school districts in administering the textbook

7. *Id.* at 3070.
8. Board of Educ. v. Allen, 382 U.S. 236 (1968).
9. Mueller, *supra* note 1, at 3075.
10. Elbe v. Yankton Indep. School Dist. No. 1, 714 F.2d 848 (8th Cir. 1983).
11. Meek v. Pittenger, 421 U.S. 349 (1975).
12. Board of Educ., *supra* note 8.

loan program fell within the constitutional proscriptions established by the Supreme Court in *Meek* and in *Wolman*.[13] The case was remanded to the district court for consideration of this issue.

6.1b Transportation

Litigation with regard to the constitutionality of Rhode Island laws providing for the transportation of children attending nonpublic schools reached the Court of Appeals for the First Circuit.[14] This law divided the state into five regions and required each local school committee to provide a resident student with bus transportation to the school he or she attended, whether public or private, as long as the school was within the region in which the pupil resided. A variance procedures was provided, allowing students to attend a school outside the region in which they resided if the commissioner of education found that there was no similar school within the region and that the school the pupil attended was within fifteen miles of the city or town in which the pupil resided. Plaintiffs contended the statutes violated the estabishment clause of the first amendment. The federal district court held the statutes unconstitutional because they provided sectarian school children with greater opportunities than were available to their public school counterparts and because the administrative require ments of the statute constituted an excessive entanglement of church and state.[15]

The court of appeals affirmed the district court's decision with regard to the excessive entangelement analysis. However, it held the invalid portion of the statute was severable from the otherwise valid portions because it was only a minor part of the statutory scheme. The court of appeals held the remaining portions of the law constitutional. The court ruled the statute served a secular purpose and did not have a primary effect of advancing or inhibiting religion. It found that only the portion of the statute requiring the commissioner of education to determine whether the sectarian school a student wished to attend was "similar" to a school located within the region involved excessive entanglement because of the possibility that the commissioner, "would have to engage in educational and perhaps even theological hairsplitting to compare sectarian schools, especially where the schools may represent competing orders or approaches of a single faith ....

13. Wolamn v. Walter, 433 U.S. 229 (1977).
14. Members of Jamestown School Comm. v. Schmidt, 699 F.2d 1 (1st Cir. 1983).
15. Members of Jamestown School Comm. v. Schmidt, 525 F. Supp. 1045 (D.R.I. 1981). *See* THE YEARBOOK OF SCHOOL LAW 1982 (P. Piele, ed.) [hereinafter cited as YEARBOOK 1982] at 143.

Moreover, even such seemingly secular items as library or drama program equality may pose religious issues, for one man's masterpiece may be another's heresy."[16] As noted, this portion of the law was ruled to be severable from the valid portions.

Petitioners in a West Virginia case sought to require a county board of education to provide school bus transportation for their children who attended parochial schools.[17] West Virginia statutes authorized a local school board to provide transportation at public expense for all children of school age living more than two miles from school by the nearest available road. The Kanawha County Board of Education provided either a monetary stipend to parents for the transportation of parochial students or permitted them to ride school buses on established public school bus routes. The Supreme Court of Appeals of West Virginia upheld the constitutionality of the statute, ruling that the equal protection clause of the fourteenth amendment was not violated by treating public and nonpublic school children differently in the allocation of state aid and other educational resources. It also held that paying parents full monetary stipends for transportation of parochial school children, together with permitting them to ride school buses on regularly scheduled bus routes, constituted compliance with the statute. The court found the stipend being paid parents of parochial school students was inadequate and directed that it be increased to an amount needed to provide adequate transportation.

New York statutes require that parents who wish a school district to provide students with transportation to a nonpublic school must submit an application before April 1 of the preceding school year. In a New York case the parents failed to apply for transportation to a nonpublic school for their daughter until late May and their request was denied by the board of education.[18] An appeal was taken to the New York Commissioner of Education who directed the school board to provide the transportation requested. The school board appealed the commissioner's decision and the court ruled in favor of the school board, finding the commissioner had failed to distinguish adequately between a prior case in which the board had granted a late request for transportation and the present case. The court found the two cases were not "in like circumstances" and annulled the commissioner's determination.

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16. Members of Jamestown School Comm., *supra* note 14.
17. Janasiewicz v. Board of Educ. of Cty. of Kanawha, 299 S.E.2d 34 (W. Va. 1982).
18. Board of Educ., Hauppauge Union Free School Dist. v. Ambach, 462 N.Y.S.2d 294 (N.Y. App. Div. 1983).

6.2 SOURCES AND ALLOCATION OF PUBLIC SCHOOL FUNDS

6.2a State School Finance Programs

Two cases in which the constitutionality of state programs for financing elementary and secondary schools were at issue were decided during the period covered by this yearbook. The Court of Appeals of Maryland upheld the constitutionality of that state's system of financing public elementary and secondary schools.[19] Plaintiffs included boards of education of four of the state's least wealthy school districts, taxpayers, students, parents, and public officials. They claimed Maryland's school support program violated (1) the equal protection clause of the fourteenth amendment, (2) the equal protection guarantee of article 24 of the Maryland Declaration of Rights, and (3) section 1, article VIII of the Maryland Constitution, which directs the General Assemby to "establish throughout the State a thorough and efficient System of Free Public Schools; and [to] provide by taxation, or otherwise, for their maintenance." The plaintiffs alleged that a lack of school funds caused by the state's inadequate financing system made it impossible for them to meet their constitutional obligations under the equal protection guarantee or under the "thorough and efficient" clause of Maryland's constitution. The trial court ruled for the plaintiffs and the state appealed.

The Court of Appeals of Maryland conducted a detailed review of the history of the state's constitutional provisions concerning public education. The court found that the words "thorough and efficient," considered in historical context, are not the equivalent of "uniform." The court stated:

> Nor do these words impose upon the legislature any directive, in its establishment of the public school system, to so fund and operate it that the same amounts of money must be allocated and spent, per pupil, in every school district in Maryland. To conclude that a "thorough and efficient" system under [section] 1 means a full, complete and effective educational system throughout the State, as the trial judge held, is not to require a statewide system which provides more than a basic or adequate education to the State's children. The development of the statewide system under [section] 1 is a matter for legislative determination; at most, the legislature is commanded by [section] 1 to establish such a system, effective in all school districts, as will provide the State's youth with a basic public school education."[20]

19. Hornbeck v. Somerset Cty. Bd. of Educ., 458 A.2d 758 (Md. 1983).
20. *Id.* at 776.

The court concluded:

> The record in this case demonstrates that Maryland has continuously undertaken to provide a thorough and efficient public school education to its children in compliance with Article VIII of the Maryland Constitution. That education need not be "equal" in the sense of mathematical uniformity, so long as efforts are made, as here, to minimize the impact of undeniable and inevitable demographic and environmental disadvantages on any given child. The current system, albeit imperfect, satisfies this test.[21]

The court next considered whether Maryland's system of public school finance violated either the equal protection clause of the fourteenth amendment or the equal treatment required by article 24 of the Maryland Declaration of Rights. The court agreed with the lower court's determination that Maryland's system did not violate the equal protection clause of the fourteenth amendment, noting that *Rodriguez*[22] is dispositive of the federal constitutional claim. With regard to the question of whether education is to be considered a fundamental right, the court reviewed decisions by other states involving similar issues and declined to "adopt the overly simplistic articulation of the fundamental rights test set forth in *Rodriguez*, i.e., that the existence of a fundamental right is determined by whether it is explicitly or implicitly guaranteed in the constitution."[23] Noting that Maryland's constitution either explicitly or implicitly guarantees rights that in no way could be considered fundamental, the court said:

> The right to an adequate education in Maryland is no more fundamental than the right to personal security, to fire protection, to welfare subsidies, to health care or like vital governmental services; accordingly, strict scrutiny is not the proper standard of review of the Maryland system of financing its public schools.[24]

It further noted that even if education were deemed a fundamental right, strict scrutiny would be appropriate only if a significant deprivation of that right occurred, and that no such deprivation had taken place in Maryland because no child was being denied adequate education.

The court found that Maryland's system of school finance satisfied the rational basis test, citing a legitimate state interest in promoting local control over education. The court stated:

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21. *Id.* at 780.
22. San Antonio School Dist. v. Rodriguez, 411 U.S. 1 (1973).
23. Hornbeck, *supra* note 19, at 786.
24. *Id.*

> Although the General Assembly has never explicitly stated the object of its public school financing system, it is readily apparent that a primary objective is to establish and maintain a substantial measure of local control over the local public school systems—control exercised at the local level through influencing the determination of how much money should be raised for the local schools and how that money should be spent .... We think that the legislative objective of preserving and promoting local control over education is both a legitimate state interest and one to which the present financing system is reasonably related. Utilizing property taxation to partly finance Maryland schools is, therefore, rationally related to effectuating local control over public schools.[25]

Accordingly, the court held the state's system of financing public education to be constitutional.

The court commented on the central role of education in American society:

> [T]he issue in cases challenging the constitutionality of state public school finance systems is not whether education is of primary rank in the hierarchy of social values, for all recognize and support the principle that it is. Nor is the issue whether there are great disparities in educational opportunities among the State's school districts, for the existence of this state of affairs is widely recognized. Neither is the issue in this case whether it is desirable, as a matter of Maryland's social policy, that the same mathematically precise amount of money should be spent on each child's public school education, without regard to the wealth of the subdivision in which the students reside. The issue is whether anything in the constitution, state or federal, requires such a result or prohibits any county, regardless of wealth, from spending any more .... The expostulations of those urging alleviation of the existing disparities are properly to be addressed to the legislature for its consideration and weighing in the discharge of its continuing obligation to provide a thorough and efficient statewide system of free public schools. Otherwise stated, it is not within the power or province of members of the Judiciary to advance their own personal wishes or to implement their own personal notions of fairness under the guise of constitutional interpretation. The quantity and quality of educational opportunities to be made available to the State's public school children is a determination committed to the legislature or to the people of Maryland through adoption of an appropriate amendment to the State Constitution.[26]

25. *Id.* at 788.
26. *Id.* at 790.

The Supreme Court of Arkansas reached the opposite conclusion with regard to the constitutionality of the method of financing public schools employed in that state.[27] Eleven Arkansas school districts challenged the constitutionality of the state's system of financing public schools. The trial court ruled in favor of the plaintiffs and the state board of education appealed. The Supreme Court of Arkansas affirmed the trial court's decision and held the Arkansas system of financing public schools to be unconstitutional.

The Arkansas school finance system was similar, in broad outline, to the system employed in Maryland. However, in Arkansas a series of "hold-harmless" provisions over a thirty-year period had the effect of "freezing" the amount of state aid a district received. In addition, half of the funds remaining after the base aid was distributed were distributed on a flat grant per pupil basis. As a result, funds available for distribution under the equalization provisions of the Arkansas school finance plan constituted only 6.8% of the minimum foundation aid paid school districts in 1979-80. In addition, a school district was not eligible to receive state aid for vocational education until it had first established a program with local funds. Wealthier districts that could raise funds more easily obviously were advantaged by this requirement.

Plaintiffs claimed the state system violated the Arkansas Constitution's guarantee of equal protection (article II, sections 2, 3, and 18) and its requirement that the state provide a general, suitable and efficient system of education (article XIV, section 1). The plaintiffs contended that the great disparity in funds available to school districts throughout the state was due primarily to variations in the local tax base, that these variations were unrelated to the educational needs of a given district, that the existing state financing system failed to compensate for revenue disparities resulting from widely varying local tax bases, and that the state school aid system widened, rather than narrowed, the gap between property poor and property wealthy districts. The Arkansas Supreme Court noted that in most cases where similar state financing systems had been held unconstitutional, the court had judged the state constitution's equal protection clause to be applicable and to require that equal education opportunities be provided to students throughout the state. The court stated:

> There is no sound basis for holding the equal protection clause inapplicable to the facts in this case. The constitutional mandate for a general, suitable and efficient education in no way precludes us from applying the equal protection clause to

27. DuPree v. Alma School Dist. No. 30, 651 S.W.2d 90 (Ark. 1983).

> the present financing system, in fact under the interpretations of such cases as *Robinson*, *supra*, that clause only reinforces the decision that the equal protection clause applies.
>
> We can find no legitimate state purpose to support the system. It bears no rational relationship to the educational needs of the individual districts, rather it is determined primarily by the tax base of each district. The trial court found the educational opportunity of the children in this state should not be controlled by the fortuitous circumstance of residence, and we can concur in that view. Such a system only promotes greater opportunities for the advantaged while diminishing the opportunities for the disadvantaged.[28]

The court noted that jurisdictions in which no equal protection violation had been found in a school finance system based on district wealth generally uphold the system of funding by finding a legitimate state purpose in maintaining local control. The court, however, was of the opinion that two fallacies in this reasoning existed. First, greater equalization among districts need not dictate a reduction in local control and, second, local control is a mere illusion if financial limitations prevent its exercise in poor districts. The court stated, "Consequently, even without deciding whether the right to a public education is fundamental, we can find no constitutional basis for the present system, as it has no rational bearing on the educational needs of the districts."[29]

A case decided in New Jersey involved an action by several local school districts challenging a formula adopted by the legislature to reduce minimum state aid to local school districts by $14 million for the fiscal year ending June 30, 1983.[30] The action reducing the appropriation for minimum aid also provided three criteria to be used in determining whether districts would receive aid. The plaintiffs argued that the criteria were discriminatory, arbitrary, and unreasonable. In rejecting their arguments, the court commented:

> Plaintiffs apparently believe that the *Robinson v. Cahill* decisions give their districts some sort of basic constitutional entitlement to minimum state aid. Almost the exact opposite is true. The *Robinson v. Cahill* decisions are essentially hostile to the concept of minimum aid to all districts because those decisions view minimum aid as being counterproductive to the goal of eliminating disparity in per pupil expenditures. Far from being constitutionally desirable, minimum aid is a highly suspect way of giving state aid to local school districts.[31]

28. *Id.* at 93.
29. *Id.*
30. Fairfield Twp. Bd. of Educ. v. Kean, 457 A.2d 59 (N.J. Super. Ct. 1982).
31. *Id.* at 63.

Thus, the court held that the formula violated neither equal protection guarantees nor state constitutional provisions requiring a "thorough and efficient" system of free public schools.

In Missouri, as in most other states, the statutory formula used in computing state funds to which school districts are entitled includes the market value of property located in the district. Several Missouri school districts brought action against the state tax commission and the state department of education contesting the procedure used in determining a district's percentage of assessed value to true value.[32] They claimed the tax commission was obligated to consider real property and personal property separately in determining the percent of true value at which property in each county is assessed. The tax commission determined the percent of true value based solely on samples of real property, claiming that a statistically valid ratio of personal property assessment would be impractical, if not impossible, to compute. The Supreme Court of Missouri ruled that real property and personal property must be considered separately. If the tax commission makes no study with reference to personal property, then it must advise the state department of education that the ratio it certifies applies only to real property. The state department of education, in applying ratios to allocate state school foundation funds among local school districts, should utilize personal property assessments reported for each school district to represent the equalized assessed valuation of personal property in the district.

In a California case, action was brought by a local school district to prevent the California Department of Education from "recapturing" over $3 million by deducting this amount from state payments due the district.[33] The dispute arose over "average daily attendance" funds received by the district for students enrolled in federally approved and supported vocational education classes. The facts in the case were quite complex, involving the Fullerton school district's entitlement to funds based on its amended claims for additional monies for preceding school years. The California Department of Education had paid the claims and then sought to recapture the money based on a 1977 amendment to the statute governing such payments. The trial court denied a writ of mandate to prevent the department of education's recapture of the money and the district appealed. The court of appeal reversed the trial court's decision, holding that evidence supported application of the

32. State *ex rel.* School Dist. of City of Independence v. Jones, 653 S.W.2d 178 (Mo. 1983).

33. Fullerton Union High School Dist. v. Riles, 188 Cal. Rptr. 897 (Cal. Ct. App. 1983).

doctrine of equitable estoppel against the department. Furthermore, the court ruled the Fullerton district was entitled to a writ of mandate under existing statutes, noting the general rule of construction that statutes are not to be given retroactive effect unless the intent of the legislature cannot be otherwise satisfied. The court ruled that a 1979 amendment to the statute at issue prohibited a future filing of an amendment claim but did not authorize retroactive recapture of funds already paid.

A case decided in Massachusetts involved an appeal by a town from a trial court judgment declaring the town was entitled to receive reimbursement from the state for only 50% of the cost of construction of its senior high school rather than 65%.[34] The state provided reimbursement for school construction under a statute originally enacted in 1948 and subsequently amended. One of the subsequent amendments provided a 65% rate of reimbursement (rather than 50%) for projects in depressed areas that were approved on or after January 1, 1971. The court of appeal found that the project in question had been approved on October 27, 1970, and affirmed the decision of the trial court.

The auditor general of Pennsylvania issued an audit of the financial affairs of the School District of Lancaster in which it found that a forfeiture in the amount of $18,266 would be required because the district had employed improperly certified teachers.[35] The district's petition for review was quashed because it had failed to follow proper procedures. The court pointed out that under the state's administrative agency law, the auditor's report was an adjudication from which an appeal may be taken. Since the district failed to challenge the audit report and its finding, it could not later complain when the state department of education complied with the mandate of the report.

The state treasurer of Idaho sought to require the legislature to reimburse the state's public school endowment fund for losses incurred on individual security trades.[36] The legislature enacted a statute providing for offsetting capital gains against capital losses of the public school endowment fund at the end of a four-year accounting period. The treasurer claimed the statute violated article IX, section 3 of the Idaho Constitution, which requires the legislature to make good any losses suffered by the fund. The treasurer maintained that it was the legislature's responsibility to make good any losses sustained on individual transactions and therefore offsetting losses against gains was

34. Town of Burlington v. Board of Educ., 448 N.E.2d 398 (Mass. App. Ct. 1983).
35. School Dist. of Lancaster v. Commonwealth Dep't of Educ., 458 A.2d 1024 (Pa. Commw. Ct. 1983).
36. State *ex rel.* Moon v. State Bd. of Examiners, 662 P.2d 221 (Idaho 1983).

impermissible. The Supreme Court of Idaho rejected this contention, holding that permitting the offsetting of capital gains against capital losses at the end of a four-year accounting period accorded with the constitutional mandate.

An action was brought in New Jersey challenging the validity of a constitutional amendment limiting the state's right to claim riparian lands.[37] At the time of the American Revolution, title to tidal lands became vested in the state as successor to the English sovereign. The state constitution provided that proceeds from the sale of riparian lands were to be dedicated to the public schools. The state constitution was amended in November, 1981, to provide that lands that had not been tidal flowed at any time within forty years were to be deemed riparian lands and that unless the state had specifically asserted a claim to such lands, such a claim would be barred. The state was further required to define and assert any claims it had not yet asserted within one year of the passage of the amendment. Plaintiffs challenged the validity of the constitutional amendment on various grounds, including that it sought to convey without compensation state land that had been irrevocably dedicated as trust property and that it would violate the contract clause of the United States Constitution. The Superior Court of New Jersey rejected all arguments advanced by the plaintiffs, concluding that the constitutional amendment in question was in all respects valid.

6.2b Funds for Special Education

A case decided by the Court of Appeals for the Fifth Circuit involved a challenge to Mississippi's policy of refusing to formulate individual educational programs for handicapped children extending beyond 180 days per year.[38] The court reversed a district court decision and held that the state's policy violated mandates under the Education for All Handicapped Children Act (P.L. 94-142). The court noted that it was well established that lack of funds may not limit the availability of appropriate educational services to handicapped children more severely than it does to normal children.

The case decided by the Court of Appeals for the Second Circuit involved the question of whether or not the New York City Board of Education should be required to pay the cost of a student's placement in a private school.[39] The court affirmed a district court decision that the student was not entitled to public funding because he had not

37. Dickinson v. Fund for Support of Free Pub. Schools, 454 A.2d 491 (N.J. Super. Ct. 1982).
38. Crawford v. Pittman, 708 F.2d 1028 (5th Cir. 1983).
39. Zvi D. v. Ambach, 694 F.2d 904 (2d Cir. 1982). *See* YEARBOOK 1982 at 219-20.

established that the private school was his "current" educational placement within the meaning of P.L. 94-142. Since the district had not previously agreed or been ordered to provide a private school placement, it was not required to pay for the student's education in a private school.

6.2c Federal Funds for Education

New Jersey and Pennsylvania each received federal grants under Title I of the Elementary and Secondary Education Act of 1965 (ESEA). Federal auditors later determined that each state had misapplied a portion of the funds. The states requested review by the education appeal board, which modified the findings of the auditors but nevertheless assessed a deficiency against each state. When the orders became final each state petitioned for review. The cases were consolidated and the court of appeals held that the Department of Education did not have authority to issue the orders. The United States Supreme Court reversed the ruling of the court of appeals and remanded the case for further proceedings.[40] The Court ruled that the court of appeals had jurisdiction, that the secretary of education had authority to recover ESEA funds misused by a state under both the 1978 amendments and the pre-1978 version of the law, and that imposition of liability for misused funds did not interfere with state sovereignty in violation of the tenth amendment. Regarding the latter point, the Court stated:

> Requiring States to honor the obligations voluntarily assumed as a condition of federal funding before recognizing their ownership of funds simply does not intrude on their sovereignty. The State chose to participate in the Title I program and, as a condition of receiving the grant, freely gave its assurances that it would abide by the conditions of Title I . . . the State failed to fulfill those assurances, and it therefore became liable for the funds misused, as the grant specified.[41]

Representatives of kindergarten students whose families met the poverty-level income guidelines for receipt of free and reduced price lunches under the National School Lunch Act brought action against the school board of a Utah school district and its individual members, state and local educational officials, and the secretary of the United States Department of Agriculture, seeking to force the school district to

40. Bell v. New Jersey and Pennsylvania, 103 S. Ct. 2187 (1983).
41. *Id.* at 2197.

provide them free or reduced-price lunches.[42] One group of kindergarten students attended classes in the morning and returned home for lunch; the second group attended class in the afternoon after lunch. The school district did not provide lunches to kindergarten students because they were not scheduled to be in attendance at school during the lunch hour. The plaintiffs argued that the kindergarten students met the only two statutory criteria for participation in the program, namely, family income level and school attendance. The trial court entered summary judgment against the plaintiffs and they appealed. The Court of Appeals for the Tenth Circuit affirmed the district court decision. It ruled that otherwise qualified half-day kindergarten students who were not scheduled to be in attendance at school when lunch was served as a result of bona fide curriculum considerations were not entitled to receive free or reduced-price lunches. The court rejected the argument that failing to provide them with free lunches violated the equal protection clause of the fourteenth amendment because the reasons for the classification were genuine, reasonable, and accomplished legitimate educational purposes.

Further action occurred in a case involving regulations adopted under Title IX, 20 U.S.C. section 1682.[43] A previous decision by the Fifth Circuit Court of Appeals had been vacated by the United States Supreme Court and remanded for further consideration. The court of appeals determined that the Department of Education could not raise for the first time on an appeal the defense that it had not completed administrative proceedings when it suspended federal aid to the school system. The court decided that further district court proceedings were necessary because the Department of Education's order deferring federal funds to the Dougherty County School System made no distinction among the programs to which the funds were applied. Consequently, it remanded the case to the district court for further proceedings consistent with the Supreme Court's opinion.

Several Arkansas school districts whose boundaries were either entirely or partly within national forest boundary lines brought an action seeking a share of monies received under the Payments in Lieu of Taxes Act (Title 31, U.S.C. sections 1601 *et seq.*).[44] The school districts alleged that the defendant counties had received payments from the United States Secretary of Interior for "entitlement lands" but had not paid monies to the plaintiff school districts. They claimed regulations

42. Granite Nutrition Coalition v. Board of Educ. of Granite School Dist., 711 F.2d 953 (10th Cir. 1983).

43. Dougherty Cty. School Sys. v. Bell, 694 F.2d 78 (5th Cir. 1982).

44. Altus-Lenning School Dist. No. 31 v. Franklin Cty., 568 F. Supp. 95 (W.D. Ark. 1983).

adopted by the secretary excluding school districts from the units of local governments that were entitled to receive payments in lieu of taxes were in excess of the secretary's authority. They also claimed that Arkansas counties were required to distribute payments in lieu of taxes to school districts because, according to the principles used by the Bureau of the Census, they are units of local government. They also alleged that such funds should be distributed between counties and school districts in the same ratio as provided by the millage rate for ad valorem tax revenues. The federal district court ruled the secretary of the interior did not exceed his authority in promulgating the regulation in question. It also held that even if an Arkansas statute governing apportionment to counties within national forests applied to funds received under the Payments in Lieu of Taxes Act, the state statute conflicted with the supremacy clause of the United States Constitution. Consequently, judgment was rendered for the defendants.

6.2d School Fees

The United States Supreme Court upheld the constitutionality of a Texas statute permitting a school district to deny tuition-free admission to a minor living apart from his parent or guardian if his presence in the district was for the primary purpose of attending the public schools.[45] The case involved a minor child who was a United States citizen but whose parents were Mexican citizens residing in Mexico. The boy was living with his sister in McAllen, Texas, for the primary purpose of attending school in the McAllen Independent School District. The Texas Education Code [Section 21.031(d)] denies tuition-free attendance to a minor living apart from a parent or guardian if the primary purpose of the minor's presence in the school district is to attend the public schools. Plaintiff alleged that this statute violated the equal protection and due process clauses of the fourteenth amendment. The federal district court granted judgment for the defendants, as did the United States Court of Appeal.

The Supreme Court stated that "[a] bona fide residence requirement, appropriately defined and uniformly applied ... does not violate the Equal Protection Clause of the Fourteenth Amendment."[46] The Court held the Texas statute to be bona fide residence requirement that satisifed constitutional standards. It commented that the statute in question was far more generous than the traditional residency standard because a child satisfied the statutory test so long as he was not living in the district for the sole purpose of attending school.

45. Martinez v. Bynum, 103 S. Ct. 1838 (1983).
46. *Id.* at 1842.

The Santa Barbara, California, school district decided to impose a fee for participation by high school students in after-school sports, drama, choral, and orchestra performances. Action was brought seeking to enjoin the imposition and collection of the fee. Plaintiffs contended that the fees violated both the California Constitution and the state administrative code. The trial court concluded the fees were not prohibited by the state constitution, the state administrative code, or the equal protection guarantees of the state and federal constitutions. However, the California Court of Appeal reversed the trial court's decision because the "performances" for which the activity fees were charged, although labeled "extra-curricular" by the respondents, were in fact an important part of the courses to which they related even if a student received credit for graduation without taking part in them. It determined that the performances were directed by school personnel, used school facilities, and were inextricably linked to courses offered for credit by the school. It found that the California Education Code does not permit local school districts to educate students by means other than by public expense and that the fees in question conflicted with, were inconsistent with, and preempted provisions of the California administrative code.[47]

A local education association in New Jersey raised questions concerning the degree of control a local board of education exercised over a driver education program in its high school.[48] High school sophomores in the district were required to attend for credit five weeks of classroom instruction in driver education. Behind-the-wheel training was offered after school, evenings, and weekends by the adult evening school for a fee of $105. The administrative law judge concluded that failure to provide behind-the-wheel instruction in the regular school curriculum was not a denial of a thorough and efficient education; that classroom instruction in driver education was an integral part of the school curriculum; that behind-the-wheel training was an integral part of the driver education program; that behind-the-wheel training may be separated from curricular offerings incorporated in the regular school day (assuming proper supervision and the use of certified teachers); and that the board may not charge a tuition fee for pupils participating in the behind-the-wheel training program.

On review the state commissioner of education set aside the administrative law judge's decision and awarded summary judgment for the board of education. The plaintiff education association appealed.

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47. Hartzell v. Connell, 186 Cal. Rptr. 852 (Cal. Ct. App. 1982).
48. Parsippany-Troy Hills Educ. Ass'n v. Board of Educ., 457 A.2d 15 (N.J. Super. Ct. App. Div. 1983).

The appellate court determined that New Jersey statutory provisions and associated regulations "leave little doubt that the choice of which courses to offer, and, necessarily, the content of those courses, is a discretionary decision left to the local boards of education, subject only to the periodic review of the Commissioner and State Board of Education,"[49] and concluded that the local board's decision not to offer behind-the-wheel training was within its discretion. The court found no reason to require behind-the-wheel training be taught within regular school hours. It held that charging a fee for behind-the-wheel training was permissible, thus upholding the ruling of the state commissioner of education.

6.3 SCHOOL TAX ISSUES

6.3a Power to Tax

An Illinois statute permitted school districts to incur indebtedness and issue bonds to create a working cash fund. When two Illinois school districts levied taxes to pay the principal and interest on bonds issued to *increase* the amount of their existing working cash funds, taxpayers objected.[50] They argued that the districts had previously created working cash funds and had no authority to issue bonds to increase the amount in the existing working cash fund. The trial court ruled in favor of the school districts and the taxpayers appealed. The appellate court reversed the decision. It noted that Illinois statutes provided two means of increasing the amount of money in a working cash fund: (1) by levying a working cash fund tax and (2) by abolishing the fund and creating a new one. The court therefore held that school district boards had no authority to incur indebtedness and issue bonds for the purpose of increasing the amount of money in an existing working cash fund.

In Pennsylvania, a township and a school district each levied "business privilege taxes" under the authority of Pennsylvania's Local Tax Enabling Act.[51] Taxpayers-merchants engaged in the wholesale or retail sale of goods claimed the taxes in question exceeded the maximum limitations and sharing provisions of the Local Tax Enabling Act, which established limits on the rate and basis of the tax and also provided that when two political subdivisions each imposed a tax permitted under the act the maximum rate of tax would be one-half of the rate provided in the statute. The school district and the township

49. *Id.* at 18.
50. People *ex rel.* Walgenbach, 452 N.E.2d 760 (Ill. App. Ct. 1983).
51. Coney Island v. Pottsville Area School Dist., 457 A.2d 580 (Pa. Commw. Ct. 1983).

argued that the taxes in question were "business-privilege taxes" and merely utilized the volume of business as a measure of the tax. The trial court ruled in favor of the taxpayers and the Commonwealth Court of Pennsylvania affirmed. It noted that the nature of a tax is to be determined by its substance, not by its label; that merely labeling a tax "a business-privilege tax" does not necessarily make it one; and that the taxes in question were invalid and illegal to the extent that they exceeded the limitations and sharing provisions of the local tax Enabling Act.

Taxpayers in a Texas school district attacked the authority of the district to levy a tax, claiming that the qualified voters of the district had never voted approval of the tax as required under the Texas Constitution (article VII, section 3).[52] Freer Independent School District was validly created in 1976 by splitting it off from an existing school district. The plaintiffs did not challenge the validity of the district's creation; they challenged the authority of the district to levy, assess, or collect ad valorem taxes in the absence of an election held for that purpose. The Texas Court of Appeals found that the affirmative, *and exclusive*, grant of power allowing a school district to levy the taxes in question was conferred by article VII, section 3 of the Texas Constitution. The court declared the taxes in question void because they had never been authorized at an election held for that purpose as the constitution required.

In a New York case the petitioners sought to compel a county board of assessors to cancel certain tax exemptions for school purposes.[53] The statute permitted an exemption of 50% of the increased value resulting from construction or alteration of real property with the exemption to be reduced by 5% each subsequent year. The statute also permitted a school district to reduce the percentage of exemption by resolutions of the school boad. The court held that the resolutions reducing tax exemptions in the school districts involved were valid and effective and that the duty of the county boad of assessors to cancel the tax exemptions and assess the proprety was a continuing one.

In a case decided by the Supreme Court of Pennsylvania,[54] a hospital claimed it was exempt from real estate taxes imposed by a school district. The county board of property assessment had denied the hospital's application for an exemption; the trial court held in favor of the hospital; the commonwealth court reversed the orders of the trial court, and the hospital appealed. The Pennsylvania Supreme Court

52. Manges v. Freer Indep. School Dist., 653 S.W.2d 553 (Tex. Ct. App. 1983).
53. Walker v. Board of Assessors of Nassau Cty., 460 N.Y.S.2d 726 (N.Y. App. Div. 1983).
54. West Alleghany Hosp. v. Board of Property Assessors, 44 A.2d 1170 (Pa. 1982).

held that the hospital was entitled to tax-exempt status. The issue in dispute was whether the hospital was "endowed and maintained by public or private charity" as required by the Pennsylvania Constitution (article VIII, section 2). The court ruled the hospital met this test despite the fact that cash donations covered only a small part of its day-to-day operating costs, with the remainder billed to patients. It concluded that the word "charity" as used by the legislature did not contemplate that there by only a nominal charge to beneficiaries of the hospital's services.

Taxpayers in Florida who had resided in that state for less than five years challenged the constitutionality of a Florida statute establishing a five-year residency requirement as a pre-requisite to entitlement to a $25,000 homestead tax exemption.[55] The district court held the statute constitutional and the taxpayers appealed. The Supreme Court of Florida held the statute was unconstitutional because it violated the equal protection clause of the Florida Constitution. The state constitution was amended in 1980 to provide a three-step enhancement of homestead exemptions, to reach $25,000 in 1982. The Florida legislature, in a statute implementing the constitutional amendment, added a provision specifying that only those who had been permanent residents of the state for at least five consecutive years would be entitled to the $25,000 exemption. The court found that the statute failed to pass even a minimal rational basis test. The court reasoned:

> We fully realize that tax exemptions and disparity in taxes are not totally prohibited. However, there must be at least a rational basis for disparities to exist. None of the four bases argued by the state and expressed in Speaker Haben's affidavit meets the rational basis test. First, it is constitutionally prohibited for this state to impose different taxes on its citizens based soely on their length of permanent residence in the state. Second, it is not a legitimate state purpose to reward certain citizens for past contributions to the detriment of other citizens. Third, we find five years is an unreasonable period of time to establish bona fide residency and is unnecessary to discourage fraudulent homestead exemption applications. Fourth, the avoidance of possible or excessive immigration of individuals to this state is clearly not constitutionally permissible. Finally, the conditional language in article VII, section 6(d), Florida Constitution, does not in our opinion give the legislature blanket authority to violate the equal protection clause of Florida's constitution.[56]

55. Osterndorf v. Turner, 428 So.2d 539 (Fla. 1982).
56. *Id.* at 545.

Georgia taxpayers brought suit against various public officials in which they raised constitutional issues concerning the equalization of assessments among counties, the use of local option sales tax proceeds for educational purposes and establishing 40 percent of fair market value as the assessed value of tangible property.[57] The trial court ruled in favor of the defendants and taxpayers appealed. The Supreme Court of Georgia affirmed the lower court's judgment. It held that the general assembly had inherent power to require uniformity of taxation between counties and that such power could be delegated to the state revenue commissioner. The court also ruled that excluding education from the purposes for which the income from a local options sales tax could be used violated no constitutional provisions and that the establishment of 40 percent of fair market value as the assessment rate for tangible property did not conflict with the constitution.

In a Florida case taxpayers contested the validity of a discretionary two-mill tax levy imposed by the School Board of Marion County.[58] The trial court denied relief and plaintiffs appealed. The court of appeal held that the school board's tax levy was illegal and void because the board had failed to comply with statutory requirements concerning notification to the public of its intention to consider the tax increase. The school board failed to publish notices in the places and formats specified by statutes. The board argued that it had acted in substantial compliance with statutory requirements concerning publication of notice, but the court disagreed. The court ruled that three of the defects in publishing notice of the proposed tax were fatal to the validity of the tax because they deprived taxpayers of notice of the intended levy and of their right to attend the meetings where they could be heard and where the school board could explain the need for and purposes of the proposed levy.

A taxpayer in Nebraska contested the levy established to pay nonresident high school tuition.[59] The Supreme Court of Nebraska affirmed the trial court's decision, holding that a taxpayer who objected to the levy was required to give notice of appeal within ten days after the levy had been set by the county board of equalization. The court noted that levying a tax for the purpose of paying nonresident high school tuition was a ministerial function of the county board of equalization under Nebraska statutes. Because the taxpayers had not given notice of appeal of the nonresident tuition levy within ten days, they had failed to meet statutory requirements and the court was without jurisdiction.

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57. Salem v. Tattnall Cty., 302 S.E.2d 99 (Ga. 1983).
58. Wilson v. School Bd. of Marion Cty., 424 So.2d 16 (Fla. Dist. Ct. App. 1983).
59. *In re* 1981-82 County Tax Levy by Saunders Cty., 335 N.W.2d 299 (Neb. 1983).

A case decided by the Supreme Court of Michigan dealt with the constitutionality of a Michigan statute that authorized "variable millage" to be levied against the property of the various municipalities included within a single school district. In effect, the statute permitted a higher school tax rate to be levied on property located within one municipality than on property located in another municipality within the same school district. The Kent County Tax Allocation Board, acting under the provisions of the statute, had for a number of years authorized an extra mill of school tax upon property in the City of East Grand Rapids in comparison to the school tax rate authorized upon property in the Grand Rapids Township. In 1979 the board of tax allocation announced it would no longer authorize variable millage because it believed the statute was unconstitutional. The Supreme Court of Michigan ruled the statute in question violated the uniformity clause of the Michigan Constitution (article 9, section 3).[60] In so doing, it overruled its earlier decision upon which the lower courts had relied in holding in favor of the school district.

The Commonwealth Court of Pennsylvania affirmed a lower court ruling that a school district had not violated the requirements of a taxation statute by amending an original tax notice to inform taxpayers that the ceiling on penalties for late payment of the tax had been raised by the general assembly after delivery of the original notice, nor had it improperly applied the amendment retroactively to determine taxpayers' tax liability.[61]

An Oregon case involved the validity of a referendum reducing the tax base previously established for a school district.[62] The referendum was held as a result of an initiative petition and resulted in a vote to reduce the tax base. The Court of Appeals of Oregon held that a school district was not a "district" within the meaning of the portion of Oregon's constitution providing for initiative and referendum. Consequently, the court determined that a valid measure to reduce the school district's tax base was not a proper subject for initiative and that the results of the referendum were void.

A Pennsylvania taxpayer complained of procedural defects in a school district's tax levy and also challenged the constitutionality of Pennsylvania's system of school finance because it relied primarily upon local tax revenues.[63] The school district and the Commonwealth of Pennsylvania filed objections to the taxpayer's complaint and the

60. School Dist. of City of East Grand Rapids v. Kent Cty. Tax Allocation Bd., 330 N.W.2d 7 (Mich. 1982).
61. Greenberg v. Lower Merion School Dist., 462 A.2d 972 (Pa. Commw. Ct. 1983).
62. Deboard v. Owen, 662 P.2d 19 (Or. Ct. App. 1983).
63. Lal v. West Chester Area School Dist., 455 A.2d 1240 (Pa. Commw. Ct. 1983).

commonwealth court took original jurisdiction. The taxpayer claimed he had not received notice of school taxes for 1977 on a parcel of property he owned, although he had paid the school taxes levied on other properties he owned. In April, 1978, he offered to pay the tax due on the parcel but refused to pay the 10 percent late payment penalty. The tax collector refused to accept the payment, because under state statute the late payment penalty must be added to the tax originally assessed to constitute the tax then due, and lodged a tax claim against the parcel of property. A series of actions followed and nearly four years later the taxpayer amended his petition to join the commonwealth and its department of education to challenge the constitutionality of Pennsylvania's public school financing system. The court ruled that, in view of a statute providing that failure to receive notice would not relieve any taxpayer from payment of any taxes imposed, the claimed failure of the school district and township to meet notice requirements prescribed by the statute provided no ground to dismiss, reduce, or set aside the lien against the property. The court also ruled that the tax collector had properly refused the offer to pay the tax without penalty and that the taxpayer's challenge to the constitutionality of the state school finance system failed to state a cause of action because it did not allege any student in the district was legally injured or that students were being denied adequate basic education.

Another Pennsylvania taxpayer appealed a sentence of fines, costs, and 120 days imprisonment for failure to pay taxes on earned income to the Southwest Butler County School District.[64] The appellant was first convicted and sentenced in April, 1979. On appeal, the sentence was modified with respect to the amount of taxes due but affirmed in all other respects. After all fines and costs were paid, the plantiff's counsel moved to modify the sentence by vacating the 120 days imprisonment. The court ruled that, under the controlling staute, once a delinquent taxpayer had paid all fines and costs there can be no further sentence of imprisonment. Thus, the court vacated the jail term.

The Hays, Texas, School District appealed a take-nothing judgment entered by the trial court when the district sued to recover delinquent ad valorem taxes, penalties, and interest.[65] The Valero Transmission Company claimed the district's board of equalization had placed a fair market value on its property far greater than the property's actual fair market value; that the district had adopted an arbitrary and

64. Smith v. Commonwealth *ex rel.* Southwest Butler Cty. School Dist., 452 A.2d 1135 (Pa. Commw. Ct. 1982).

65. Hays Consol. Indep. School Dist. v. Valero Transmission Co., 645 S.W.2d 542 (Tex. Ct. App. 1982).

discriminatory plan and scheme of taxation; and that ranch and farm land within the district was assessed at a far lower ratio to fair market value than were properties of the company. The school district appealed the trial court judgment and the Texas Court of Appeals reversed the decision. The court of appeals observed that the statutes provided only three defenses to a suit for collection of delinquent taxes. It held that the trial court erred in declaring the district's assessed valuation void and invalid on the basis that it was grossly in excess of that allowed by law, or on the basis that it resulted from a discriminatory plan of taxation adopted by the district, because there had been no pleading to support these affirmative defenses. The court also found the taxpayer had failed to attack the assessment until the district brought suit to collect the unpaid tax. Because the taxpayer had not acted in a timely fashion, it was not sufficient to show that the assessment resulted from an arbitrary, unlawful, or discriminatory plan; the taxpayer also was required to establish the extent to which the assessment was excessive, for his relief, if any, is limited to that amount.

A dispute between Niagara Mohawk Power Corporation and the Troy school district concerning school taxes reached the Court of Appeals of New York.[66] The court of appeals held that taxes assessed and collected in violation of constitutional authority may be recovered by the taxpayer and that a taxpayer may challenge a levy collaterally without meeting statutory conditions precedent or following procedures of the real property tax law when the taxing authority exceeds its power. The court explained its reasoning as follows:

> Central to our decision is the distinction between conduct of the taxing authority which is erroneous and conduct which is illegal, between a special proceeding instituted to correct action the taxing authority is empowered to perform but which it has performed imperfectly, and a plenary action attacking action which exceeds the taxing authority's powers.[67]

6.3b Relationship of School Districts to Other Government Units

The Boston Teachers Union tried to enjoin the Mayor of Boston from reducing the Boston School Committee's supplemental financial request.[68] The trial court decided that the school committee, in response to comments by the mayor, could withdraw a supplemental appropriation

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66. Niagara Mohawk Power Corp. v. City School Dist. of City of Troy, 451 N.E.2d 207 (N.Y. 1983). *See* THE YEARBOOK OF SCHOOL LAW 1983 (P. Piele, ed.) [hereinafter cited as YEARBOOK 1983] at 263.

67. *Id.* at 209.

68. Boston Teachers' Union, Local 66 v. Mayor of Boston, 451 N.E.2d 1169 (Mass. App. Ct. 1983). *See* YEARBOOK 1982 at 228-29.

request and submit a request for less funds and the teachers' union appealed. The Appeals Court of Massachusetts affirmed the lower court decision. The plaintiffs argued that the mayor was bound under previous decisions to transmit the original request and had failed to do so, choosing instead to bargain with the school committee about its request. In upholding the mayor's action in this situation, the court commented

> We are of opinion that the mayor's duty to transfer the appropriation request in a timely fashion must be interpreted in light of the considerable role he plays in connection with appropriations of other items within the school committee budget. Those other items appear to have been the subject of discussion between the mayor and the school committee in this case. Transmission of the school committee's request for funds to meet previously approved pay increases is ministerial . . . but the mayor's control over the remaining supplemental budget request is absolute . . . . Where, as here, the entire collective agreement has been funded, and only costs unrelated to the collective bargaining agreement were transferred to the city's budget, the interplay between "the school committee on the one hand and the mayor and city council on the other" reflects the "unique balance of responsibilities" the Legislature intended.[69]

In another Massachusetts case the Quincy Education Association and residents of the city challenged the Quincy City Council's rejection of the committee's supplemental budget request for the 1979-80 school year, and the reduction of the committee's requst for the 1980-81 school year.[70] The Appeals Court of Massachusetts found that prior decisions made it clear that all estimates from the school committee must be in the hands of the mayor by the time he submits the recommended annual budget to the city council. Although the school committee had notified the mayor in advance that additional funds might be needed to fund new agreements, the court ruled that this was not sufficient to meet the requirement that estimates must be in the executive's hands. The court also ruled that the amount submitted by the school committee for the 1980-81 school year was subject to a 4% cap and thus the city council was acting within its power in reducing the amount requested by the school committee.

In a New Jersey case the issue before the court was the extent to which a township committee, in its review of a budget proposed by a

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69. *Id.* at 1173.

70. Quincy Educ. Ass'n, Inc. v. City of Quincy, 443 N.E.2d 435 (Mass. App. Ct. 1982).

board of education after it had been rejected by the electorate, could consider and change line items in the budget and estimates of anticipated income.[71] The state commissioner of education and the state board of education had rejected the actions of the committee and the committee appealed. The court ruled the township committee had acted arbitrarily in reducing line items in the budget and that these items were properly restored by the commissioner and the state board. However, it also ruled the committee had power to consider items of potential income as well as the school board's proposed allocation of its unappropriated free balance in its budget review and in its determination of the amount of money required to be raised by taxation.

In a Wisconsin case the Elkhorn School District sued the East Troy School District to recover property taxes owed to Elkhorn but erroneously paid to East Troy.[72] The trial court had ruled in favor of the East Troy district. The court of appeals affirmed because the East Troy district had received neither written notice nor actual knowledge of Elkhorn's claim within 120 days as required by statute. The court noted that the Elkhorn district had a right to be reimbursed by the East Troy district for mispaid tax revenues but, although the East Troy district may have had constructive notice of the circumstances giving rise to the Elkhorn district's claim long before the notice was served, Elkhorn had the burden of proving timely notice was given and it had failed to do so.

In Utah, the Granite School District brought suit against Salt Lake County and its treasurer to recover its share of property taxes. The treasurer brought a counter claim to recover the cost of collecting, apportioning, and distributing taxes on behalf of the school district. The Supreme Court of Utah determined that the county treasurer had failed to comply with a Utah statute that made it the duty of the county treasurer to pay to the school district on the first day of each month all money that had been collected on behalf of the district.[73] The court noted that taxes and other revenue raised for school purposes are regarded as trust funds and that the county treasurer acts as a trustee in collecting such revenues. The treasurer's delay in transferring to it revenues due the school district denied the district an opportunity to collect interest on the funds. The district would have been entitled to recover the interest it had lost had it been able to provide evidence of

71. Board of Educ., Twp. of Branchburg v. Township Comm. of Twp. of Branchburg, 455 A.2d 549 (N.J. Super. Ct. 1983).

72. Elkhorn Area School Dist. v. East Troy Commun. School Dist., 327 N.W.2d 206 (Wis. Ct. App. 1982).

73. Board of Educ. of Granite School Dist. v. Salt Lake Cty., 659 P.2d 1030 (Utah 1983).

the amount of its funds on deposit with the treasurer. Since the district had not provided such evidence, the decision was made prospective. With regard to the county treasurer's claim that the school district had not paid the full cost of collecting its taxes, the court found that the legislature had specifically defined what tax collection expenses a county may pass through to the district and that the legislature had authority to impose a duty upon city or county officers to collect taxes for other purposes with or without compensation for any expenses they incurred.

The Special School District of Fort Smith, Arkansas, sought a writ of mandamus to require any excess amount of the tax collector's commission to be disbursed to the school district.[74] The trial court entered judgment in favor of the county and the school district appealed. The county argued that because it had a combined office of sheriff and tax collector, the monies in question could be applied to the consolidated expenses of both functions of that office. The school district, however, claimed that only the necessary cost of collecting taxes could be retained by the county and any excess amount must be disbursed to the district. The Supreme Court of Arkansas ruled in favor of the district, expressly overruling its 1972 decision in *Dermott*.[75] The court held that only the expenses of tax collection could be assessed the school district and that sheriff's expenses cannot be funded by monies raised for school purposes. The court also ruled that a statute pertaining to the remission of excess collector's fees to all school districts of not less than 78,000 and not more than 84,000 population applied to only one county and therefore was unconstitutional because it was local and special legislation.

A Missouri case also involved the disposition of interest earned on deposited school funds.[76] The Supreme Court of Missouri held that its decision in *Fort Zumwalt*[77] was dispositive; that interest on deposited school funds is payable to the treasurer of the school district and is not to be credited to the general revenue fund of the county. The second issue raised in the case was whether all of the interest or only the net amount of interest after deducting the school district's proportionate share of the expenses associated with tax anticipation borrowings should be remitted to the school district treasurer. Citing the general rule that a school district is liable for only such expenses as are expressly or impliedly authorized by law, the court found no statute imposing such expenses upon school districts and therefore ruled they could not be held liable for such expenses.

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74. Special School Dist. of Fort Smith v. Sebastian Cty., 641 S.W.2d 702 (Ark. 1982).
75. Dermott Sp. School Dist. v. Brown, 485 S.W.2d 204 (Ark. 1972).
76. State *ex rel.* School Dist. of Springfield v. Wickliffe, 650 S.W.2d 623 (Mo. 1983).
77. State *ex rel.* Fort Zumwalt School Dist. v. Dickherber, 576 S.W.2d 532 (Mo. 1979).

A South Carolina taxpayer alleged that members of the Orangeburg County Council lacked authority to pass an ordinance setting forth the method of establishing the school tax millage.[78] The governor appointed the members of the Orangeburg County Board of Education and a board of trustees for each school district in the county was elected by qualified electors. Legislation adopted in 1979 provided that the appointed board should establish the county's school tax millage but the Supreme Court of South Carolina ruled in 1981[79] that participation by an appointed board of education in establishing a county school tax levy constituted taxation without representation. As a result, the Orangeburg County Council adopted the ordinance that was questioned by the taxpayer. The Supreme Court of South Carolina held that the county council acted within its authority because the intent of the legislature was preserved by allowing the county council to prescribe the method of establishing the school tax millage.

The Indianapolis Board of School Commissioners appealed from dismissal of its action against a county board of tax adjustment.[80] The board of tax adjustment was permitted under Indiana law to reduce "the excessive tax levy to the maximum normal tax levy." However, the board of tax adjustment reduced the Indianapolis school budget by more than $4 million below the maximum normal tax levy. The statutes permitted the Indianapolis Board of School Commissioners to challenge the board of tax adjustment's action using either of two appeal procedures. However, the school commissioners did not enter a timely appeal and, by failing to do so, waived their statutory right to review by the state board of tax commissioners as well as to challenge the county board's action.

A dispute arose in Louisiana with regard to the disposition of revenue sharing funds.[81] The funds were used to offset losses attributable to homestead exemptions and were allocated to tax recipient bodies that suffered a loss due to the homestead exemptions. The city of New Orleans appealed a decision of the trial court. The court of appeal held that the school board's portion of the revenue sharing funds was to be used to offset *current* losses. Therefore, it did not permit the school board to include an extra 1.91 mills it had levied to compensate for losses in a previous year in the computation of the revenue sharing funds to which it was entitled.

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78. Stone v. Traynham, 297 S.E.2d 420 (S.C. 1982).
79. Crow v. McAlpine, 285 S.E.2d 355 (S.C. 1981). *See* YEARBOOK 1983 at 267-68.
80. Board of School Comm'rs of City of Indianapolis v. Eakin, 444 N.E.2d 1197 (Ind. 1983).
81. City of New Orleans v. Orleans Parish School Bd., 427 So.2d 578 (La. Ct. App. 1983).
82. Vantage Petroleum v. Board of Assessment Rev., 458 N.Y.S.2d 632 (N.Y. App. Div. 1983).

A board of education in New York appealed from an order by a trial court which denied it leave to intervene in a tax proceeding.[82] The appellate court affirmed the trial court ruling because the New York legislature had amended the statute so that a school district in Suffolk County was no longer liable for refunds of the school portion of the property tax that may be owed to a petitioner as a result of tax certiorari proceeding.

6.3c Uses of Revenue

A case decided by the United States Court of Appeals for the Tenth Circuit dealt with the question of whether the city of Aurora, Colorado, and the board of education of Joint District 28-J had authority to expend school district and city funds in connection with a referendum proposal.[83] The referendum in question would have required elector approval of new or increased taxes in any jurisdiction. The school district board of education and city council opposed the proposed amendment and made cash and in-kind contributions in opposition to the proposed amendment. Plaintiffs contended that the expenditures were beyond the authority of the school district and the city. The district court agreed with the plaintiffs and ordered reimbursement. The court of appeals affirmed the decision of the district court, holding that expenditures in opposition to the proposed amendment were not authorized either by statute or by provisions of the Campaign Reform Act governing contributions involving issues in which the state and political subdivisions have an "official concern." Although the term "official concern" had not been defined by either the legislature or Colorado courts, the court of appeals agreed with the trial court that a matter of official concern would, at the very least, involve questions that would come before public officials for a decision. Since the change proposed by the referendum would not come before city or school district offcials for approval, the district court's decision was affirmed.

A New York school district entered into an agreement with its superintendent of schools under which the superintendent agreed to resign his position and the school district agreed to pay him a lump sum of $65,000 and continue several insurance policies until the termination date of his contract.[84] Residents of the school district petitioned for review of the settlement agreement. The trial court directed that a hearing be held to determine the factual question of whether the board exceeded its authority in agreeing to a lum-sum settlement in return for

83. Campbell v. Joint Dist. No. 28-J, 704 F.2d 501 (10th Cir. 1983).
84. Ingram v. Boone, 458 N.Y.S.2d 671 (N.Y. App. Div. 1983).

the superintendent's resignation and the school board appealed. The appellate court affirmed the trial court's decision, holding that the plaintiff's had standing because the state constitution forbade gifts of public funds. The court noted, however, that payment of public funds in damages for a breach of contract or in settlement of a contested claim is not prohibited and decided that a hearing was necessary to determine whether the school board had exceeded its authority.